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Abolition of the Death Penalty in Mongolia: Is “Normative Power Europe” at Work?

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Introduction

Mongolia's unlikely abolition of the death penalty in 2015 raises a number of profound questions, issues and developments. Until 2015 capital punishment had been legally shrouded by state secrecy. Public opinion in Mongolia overwhelmingly supported the death penalty, as it seems to be the case also today, whereas the EU and other foreign relations were expressing support for a moratorium and subsequent abolition. Yet, despite the moratorium and abolition, the Mongolian constitution continues to provide for the death penalty.

How did the moratorium and abolition come about, and what role had the EU played towards this development?

In 1990 Mongolia broke away from the Soviet sphere of influence, establishing *de facto* independence as an extension of its existing *de jure* independence. No longer constrained by Moscow or by a communist ideology, Mongolia adopted a multi-party system and embarked on a new and radical course with regard to its domestic and foreign policy. In addition to prioritizing the maintenance of friendly relations

with both China and Russia, Mongolia quickly adopted a “third neighbor policy” aimed at finding new allies and extending relations beyond those existing with its neighbors and former socialist allies.

Given its open society, democracy and free press as well as its recognition of new opportunities, Mongolia was particularly well-positioned to capitalize on its new political system to enhance its relations with European states and institutions. Indeed, Mongolian scholar Mendee Jargalsaikhan suggests that “Mongolia's commitment to democracy has made the EU look more favorably on the country's attempts to build relations.”¹ European analysts have made the same argument:

Cooperation between [Mongolia and the EU] is particularly strengthened by the fact that they share many of the same values in terms of democracy, freedom, human rights, nuclear disarmament, the free market *and perspectives on the death penalty* [author's emphasis]. The EU is therefore in admiration

1 Mendee Jargalsaikhan, “Mongolia's Quest for Third Neighbours: Why the European Union?” Europe-Central Asia (EUCam) Policy Brief, 25, July 2012.



of Mongolia in the sense of the progress that the country has made, in spite of the pressures of being a landlocked country between two strong neighbors that have contrasting values to the EU.²

Indeed, Mongolian diplomats continue to frequently emphasize such “shared values and norms” in their meetings with EU representatives and often express their government’s interest in adopting “European standards and norms.”³ In a statement made in 2016, the EU Ambassador to Mongolia at the time confirmed that “the Mongolian Government demonstrated interest in implementing relevant European norms and standards. This can only lay a strong foundation for ever closer cooperation into the future.”⁴

Mongolia’s remarkable transformation from a centralized socialist state into an open democracy and its initiative to establish relations with Europe as a “third neighbor” in the 1990s coincided with the surge in the EU’s efforts for the international pursuit of the abolition of the death penalty.

Mongolia’s new Constitution of 1992 and its Criminal Code of 2002 included capital punishment, and executions are believed to have taken place until at least 2008.⁵ However, in January 2010, the newly elected resident Tsakhiagiin

Elbegdorj announced a moratorium on the use of the death penalty and, with explicit support from EU representatives, began a successful initiative to abolish the death penalty.⁶

Thus, the EU and Mongolia had now embarked on a joint course of action directed at the abolition of the death penalty in Mongolia. Although President Elbegdorj’s efforts to abolish capital punishment were initially highly unpopular and tenuous, they eventually succeeded. On December 4, 2015 Mongolia changed its Criminal Code to reflect the abolition of the death penalty.

In this paper the process regarding the moratorium and subsequent abolition of the death penalty in Mongolia in relation to the EU is traced and analyzed from 1990 until 2016. As such, this paper provides a case study of the abolition. In addition, Ian Manners’ original concept of Normative Power Europe (NPE)⁷ is applied to examine the role of the EU and its member states in relation to the process that led to the abolition of the death penalty in Mongolia.

Thus the paper concludes that though Manner’s concept of NPE is helpful to understand the process towards a moratorium and the abolition from the EU’s point of view, the norm itself seems to be not widely shared in Mongolia.

2 Kateryna Rolle, The Past, Present and Future of EU-Mongolia Development Cooperation, December 2013, EIAS Briefing Paper, 2013, 07.

3 This statement is based on the author’s experiences as Netherlands Embassy Liaison Office representative in Ulaanbaatar between 2008 and 2012, see author’s biography below.

4 Hans Dietmar Schweisgut (Ambassador of the European Union to Mongolia to the EU Delegation to Mongolia), About the EU Delegation to Mongolia, EEAS, May 12, 2016.

5 OSCE/ODIHR, The Death Penalty in the OSCE Area, Background Paper 2013, Warsaw.

6 Office of the President of Mongolia, The Path of Democratic Mongolia Must Be Clean and Bloodless, January 14, 2010. Retrieved from <http://eng.president.mn/newsCenter/viewNews.php?newsId=122> [accessed 24 May 24 2018; discontinued].

7 Ian Manners, “Normative Power Europe: A Contradiction in Terms,” *Journal of Common Market Studies*, Volume 40:2, 2002, pp. 235–258.

A note on online sources and references

This paper makes frequent use of English translations of the statements by President Tsakhiagiin Elbegdorj posted on the official website of the Office of the President of Mongolia. The statements were accessible in the online archives of the Office of the President of Mongolia until at least 24 May 2018. Since, the website is limiting its online documentation to statements and activities of the successor to President Elbegdorj (the earliest document in the

online archive is now dated 10 July 2017, the first day in office of the incumbent President Battulga). For the benefit of the reader a discontinued online is referenced with the original title, date of the statement and discontinued online link. It is hoped these online sources will be made available again in the future.

Finally, the analysis also draws on the author's experiences in Ulaanbaatar as attaché with the Embassy of the Netherlands in Beijing posted to Mongolia from 2008 to 2012.⁸

Normative Power Europe: Normalizing the Abolition of the Death Penalty in International Relations

The EU's international pursuit of the abolition of the death penalty has been highlighted by scholars focusing on the EU's international role especially in relation to Ian Manners' concept of Normative Power Europe. Manners first introduced the NPE concept in his 2002 study on the diffusion of norms during his tenure at the University of Kent's department of Politics and International Relations in Canterbury. He identified five "core norms" within the EU's laws and policies: peace, liberty, democracy, rule of law, and human rights.⁹ It is worth noting Manners' statement that "accepting the normative basis of the EU does not make it a normative power, so we need to ask how EU norms are diffused."¹⁰ Manners consequently identified six channels of norm diffusion

within international relations: *contagion* (e.g., example setting), *informational* (strategic communications), *procedural* (e.g., agreements with the EU), *transference* (diffusion through European programs such as TACIS), *overt* diffusion (diffusion through EU delegations and the embassies of EU member states) and the less concrete *cultural* filter.¹¹

Interestingly, to demonstrate the value of the NPE framework, Manners conducted an analysis of the EU's efforts to normalize the abolition of the death penalty in international relations. In light of his examination of several case studies on the abolition of the death penalty, Manners identified the way "in which EU abolitionist policy is diffused through *procedural* membership conditions, *informational* common strategies, and

8 The Embassy of the Netherlands in Beijing is accredited to Mongolia. During the period 2008–2012, the author served as attaché with the Netherlands embassy in Beijing and posted to Mongolia to open and represent the Netherlands Embassy Liaison Office in Ulaanbaatar.

9 Ian Manners, p. 242.

10 Ian Manners, p. 244.

11 Ian Manners, pp. 244–245.

the *overt* role of EU delegations.”¹² According to Manners, his case study illustrated “a number of features of the EU [which is] increasingly exercising normative power as it seeks to redefine international norms in its own image.”¹³

A number of scholars, including Marika Lerch, who is both a scholar and an official of the European Parliament, and Guido Schweltnus, who works in the field of international relations, have subsequently questioned the scope and validity of the NPE concept. Lerch and Schweltnus, for example, have concluded that “the EU is not necessarily ‘normative by nature.’”¹⁴ Others, such as Thomas Forsberg, of the Finish University of Tampere, continue to question and expand on Manner’s NPE, emphasizing that the “research agenda that was launched by Manners is nowhere near to be exhausted”.¹⁵ It must be pointed out, however, that Manners’ study of the death

penalty in support of NPE has remained largely unchallenged. Indeed, according to Lerch and Schweltnus, “The death penalty case seems to support the concept on all levels. The abolitionist policy was adopted for normative reasons, pursued with argumentative means and justified coherently.”¹⁶

The current author’s intention here is not to question the scope or validity of Manners’ NPE concept; rather, the aim is to examine whether the application of this concept can advance the understanding of the case and process of Mongolia’s abolition of the death penalty. In other words, can the abolition of the death penalty in Mongolia be understood within the framework of the EU’s efforts to normalize abolition of the death penalty more widely within international relations, and if so, *how* was this norm diffused in Mongolia?

Case Study: Abolition of the Death Penalty in Mongolia

Mongolia’s Constitution of 1992 and its Criminal Code of 2002 provided for capital punishment in relation to the following seven categories of offenses: “assassination of a state or public figure, aggravated murder, rape, sabotage, terrorism, acts of banditry against state or public institutions or individuals, and genocide.”¹⁷ These offenses encompassed

no less than 59 crimes that could incur capital punishment. However, only males between the ages of 18 and 60 could be sentenced to death.

Convicts who were sentenced to death had the right to request a pardon from the president of Mongolia. If such a pardon was granted, the death sentence was commuted to imprisonment for 30

¹² Ian Manners, p. 252.

¹³ Ian Manners, p. 252.

¹⁴ Marika Lerch and Guido Schweltnus, “Normative by Nature? The Role of Coherence in Justifying the EU’s External Human Rights Policy,” *Journal of European Public Policy*, 13:2, 2006, pp. 317.

¹⁵ Thomas Forsberg, “Normative Power Europe, Once Again: A Conceptual Analysis of an Ideal Type,” *Journal of Common Market Studies*, Volume 49:, Nr 6, 2011, pp. 1,183-1,204.

¹⁶ Lerch and Schweltnus, p. 318.

¹⁷ For a short summary on the legal framework, see: OSCE/ODIHR, *The Death Penalty in the OSCE Area*, Background Paper 2013, Warsaw.

years. Disturbingly, all of the details and information related to the execution of a convict were classified as state secrets. This aspect of state secrecy had inhumane consequences for the people sentenced to death as well as for their relatives. For instance, relatives were not informed of the date of execution or even whether the person sentenced to death had been executed already. Therefore, the remains of the executed prisoner were not returned to family; nor were details disclosed regarding the disposal of the remains of the convict, such as the location of the grave.

As revealed below, the state secrecy legislation regarding executions also made it difficult for abolitionists to provide information for creating public awareness and support for the abolition of the death penalty.

The process that was initiated for the abolition of the death penalty in Mongolia began with the election of President Elbegdorj in 2009. Elbegdorj, whose participation in the movements that led to the 1990 reforms had made him a prominent political figure, emphasized anti-corruption and human rights, in his campaign. Elbegdorj did not, however, highlight the abolition of the death penalty in his election campaign. That said, as a member of parliament in 1991, he had already voiced his objections to capital punishment during various parliamentary sessions held to formulate Mongolia's new Constitution of 1992.

In 2010, against some public

opinion, President Elbegdorj announced a moratorium on the death penalty. The announcement marked a distinct break with established Mongolian policy. As recently as 2007 and 2008, Mongolia had voted against a UN resolution calling for a worldwide moratorium on the death penalty and its abolition at the UN General Assembly.¹⁸

Elbegdorj argued his case against capital punishment during his address to the Mongolian parliament on January 14, 2010, the day after the annually celebrated anniversary of the new Mongolian Constitution of 1992 and the opening of the new year's parliamentary session.¹⁹

Addressing the country's parliamentarians, the president drew specific attention to the attendance of the diplomatic corps at the public tribune which comprised representatives from the various EU delegations, including the current author. The conspicuously large EU diplomatic presence at the session clearly indicated the EU's support for the president's moratorium, as discussed below.

Importantly, the president first informed the parliament that, during the seven months following his inauguration, no executions had taken place in Mongolia. In fact, as head of state, he had honored all requests for a pardon—and all convicts on death row had requested a pardon.

Some years later in 2016, the President commemorated the circumstances that had prompted him to make this policy change:

18 The UN General Assembly 2007 Resolution: A/RES/62/149.

19 Office of the President of Mongolia, *The Path of Democratic Mongolia Must Be Clean and Bloodless*, January 14, 2010. Retrieved from <http://eng.president.mn/newsCenter/viewNews.php?newsId=122> [accessed 24 May 2018; discontinued].

On the day I swore in as the President of Mongolia on June 18th 2009, two draft decrees were tabled on my desk. One was on death penalty for a criminal. Other was to pardon him. I decided to choose life. . . . No death penalty has been carried out since that day in Mongolia.²⁰

In his speech delivered on January 14, 2010, announcing the moratorium, President Elbegdorj provided eight principle-based arguments in favor of pardoning those sentenced to death and for abolishing the death penalty in his country. The first argument was that imprisonment was a suitable alternative option to the death penalty. Second, he pointed to the irreversibility of the death penalty and the risk of executing innocent citizens. Third, he noted the historical abuse of the death penalty for political gain, referring to the Mongolian purges of the 1930s. His fourth argument was that capital punishment entailed the degradation of human dignity. Fifth, he emphasized Mongolia’s engagement with the “global family” and the global trend in favor of the abolition of the death penalty. Sixth, the president argued that the death penalty diminished the moral authority of the state. Seventh, describing capital punishment as a degradation of “the supreme human right to life,” he argued that this practice had

tarnished Mongolia’s reputation within the global community. Last, he pointed to the absence of any findings that capital punishment did, in fact, deter crime.

In addition to the above points, Elbegdorj formulated further considerations in support of the abolition of the death penalty. The first entailed the argument that state secrecy relating to all aspects of executions constituted a “blind and dark hole, just like hell.”²¹ Importantly, the Mongolian secrecy laws made it impossible for national and international organizations to monitor the punitive process. Of more concern was the president’s admission that not all information regarding previous executions was available to the head of state and that specific instructions by the head of state regarding an execution were not always followed, nor effectively monitored. The condemned person more or less disappeared into a lethal system that lacked any measures for ensuring oversight. Second, the president objected to the practice of not handing over the remains of the executed prisoner to the relatives, arguing that “while the State imposes its utmost and gravest punishment to the offender, it must not punish the dead body of the offender and his family.”²² Referring to Mongolians’ “respect for the afterlife,” the president noted that inmates on death row had committed or attempted to commit

20 Office of the President of Mongolia, Greetings to the 6th World Congress against the Death Penalty by the President of Mongolia Mongolyn [sic] Tsakhiagiin Elbegdorj, June 26, 2016. Retrieved from <http://eng.president.mn/newsCenter/viewNews.php?newsId=1892> [accessed 24 May 2018; discontinued].

21 Office of the President of Mongolia, The Path of Democratic Mongolia Must Be Clean and Bloodless, January 14, 2010. Retrieved from <http://eng.president.mn/newsCenter/viewNews.php?newsId=122> [accessed 24 May 2018; discontinued].

22 Office of the President of Mongolia, The Path of Democratic Mongolia Must Be Clean and Bloodless, January 14, 2010. Retrieved from <http://eng.president.mn/newsCenter/viewNews.php?newsId=122> [accessed 24 May 2018; discontinued].

suicide so that their remains would be returned to their families. A final consideration highlighted by the president was that the death penalty had been virtually abolished throughout the EU zone as well as in large portions of Africa and Latin America.

Concluding his address to parliament, the president announced a moratorium on the death penalty:

From today on, Mongolia is a country which suspends the execution of capital punishment, and becomes a country which announces a moratorium on execution of the death penalty. Mongolia will further aim to become a fully abolitionist country and shall conform our laws and legislation to this end.²³

Importantly, the moratorium and presidential pardon of convicts on death row would be in effect as long as President Elbegdorj remained the head of state. Moreover, the president required extensive cooperation from the Mongolian parliament to accomplish the removal of capital punishment from the Criminal Code of 2002 as well as from the Mongolian Constitution of 1992, which entailed an even more complicated procedure. President Elbegdorj's first term was to end in 2012 and it appeared that the president would require a second term to complete his efforts to abolish the death penalty.

The moratorium marked the first step toward abolishing the death penalty. At the UN General Assembly of 2010 and 2012, Mongolia now also voted in favor of a UN resolution calling for a worldwide moratorium on the death penalty and for steps leading to abolition. Importantly, on March 13, 2012 the country ratified the "Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty." Member states to the protocol are obliged to legally abolish the death penalty.

That same year, in June 2013, President Elbegdorj was re-elected for a second four-year term, during which further presidential initiatives resulted in the abolition of the death penalty in Mongolia. On December 4, 2015 the Mongolian parliament voted favorably on a new Criminal Code that abolished the death penalty.

It is noteworthy, however, that despite the success of efforts to abolish the death penalty in Mongolia, the country's constitution continues to allow for the death penalty. Article 16.1 on the citizen's right to life stipulates that "Deprivation of human life is strictly prohibited unless capital punishment as constituted by Mongolian penal law for the most serious crimes is imposed as [the] final decision by a competent court."

²³ Office of the President of Mongolia, *The Path of Democratic Mongolia Must Be Clean and Bloodless*, January 14, 2010. Retrieved from <http://eng.president.mn/newsCenter/viewNews.php?newsId=122> [accessed 24 May 2018; discontinued].

The EU’s International Pursuit of the Abolition of the Death Penalty

The EU’s position on the death penalty has been articulated on numerous occasions, most prominently within the “EU Guidelines on the Death Penalty of the Council of the European Union”:

The EU considers that the death penalty constitutes [a] serious violation of human rights and human dignity. Encouraged by the growing momentum towards abolition of the death penalty worldwide, the EU will continue its long-standing campaign against the death penalty. The abolition of capital punishment contributes to the progressive development of human rights. Capital punishment is inhumane and unnecessary. No compelling evidence exists to show that the death penalty serves as a deterrent to crime. Furthermore, any miscarriage of justice could lead to the intentional killing of an innocent person by state authorities.²⁴

Adopted in 1998, the EU Guidelines constitute the first set of EU human rights guidelines adopted by the Council that

set out the framework for diplomatic EU action, including objectives, circumstances, and instruments.²⁵

According to the Commission’s Directorate-General for International Cooperation and Development (DG DEVCO), the abolition of the death penalty is a key priority that is emphasized within the EU’s external human rights policy. The Directorate-General has further noted that “The European Union is the leading institutional actor and largest donor in the fight against [the] death penalty worldwide.”²⁶

In 2000, for instance, the Commissioner for External Relations highlighted a large number of countries with which the EU had raised the issue of the death penalty. Despite the EU’s increasing engagement with Mongolia, Mongolia was, however, not among the states mentioned by the Commissioner.²⁷

The EU’S engagement with Mongolia had formally started in 1989, with the accreditation of the EU in Mongolia. Initially, the EU was represented by a non-resident diplomatic mission based in Beijing, China. Despite this exotic arrangement, the EU swiftly recruited Mongolia into its Technical Assistance

24 Council of the European Union, EU Guidelines on Death Penalty, Brussels, April 12, 2013, 8416/13, COHOM 64, PESC 403, OC 213.

25 Commission’s Directorate-General for International Cooperation and Development (DG DEVCO), Fight against Death Penalty. Retrieved from https://ec.europa.eu/europeaid/sectors/human-rights-and-governance/democracy-and-human-rights/fight-against-death-penalty_en [accessed 24 May 2018; discontinued].

26 Commission’s Directorate-General for International Cooperation and Development (DG DEVCO), Fight against Death Penalty. Retrieved from https://ec.europa.eu/europeaid/sectors/human-rights-and-governance/democracy-and-human-rights/fight-against-death-penalty_en [accessed 24 May 2018; discontinued].

27 Chris Patten, Contribution to the Debate in the European Parliament on: –Death Penalty–Antipersonnel Landmines–Hong Kong–Serbia, SPEECH/00/404, Commissioner for External Relations, European Parliament, Plenary Session, Strasbourg, October 25, 2000.

to the Commonwealth of Independent States (TACIS) programme along with other Central Asian Republics that were formerly part of the Soviet Union such as Kazakhstan, Uzbekistan and Tajikistan.

In the 2000s, the EU formulated a “Country Strategy Paper Mongolia 2007-2017” and, in 2017, Mongolia and the EU agreed on a partnership and cooperation agreement (PCA) titled “Framework Agreement on Partnership and Cooperation between the European Union and Mongolia”. The agreement was explicitly considered as a “testimony to the growing importance of EU–Mongolia relations, which are based on the shared values of democracy, rule of law and

human rights [emphasis added] and respect for international commitments in this regard.”

Although a number of EU member states had already established embassies in Ulaanbaatar, an EU Technical Office was also set up in the Mongolian capital in 2006. Notably, after the PCA was finalized in 2017, the EU established a resident Delegation of the EU in Mongolia.

In sum, the EU evidently attached considerable importance to Mongolia despite its limited economic and geopolitical influence. But what about the EU’s international pursuit of the abolition of the death penalty and Mongolia?

The Moratorium and the EU

The EU did provide Official Development Assistance (ODA) to human rights groups in Mongolia to support the abolition of the death penalty.²⁸ In addition to the ODA, the EU diplomatically and politically supported President Elbegdorj’s efforts to abolish the death penalty, before as well as after the moratorium came into effect.

On the very day that President Elbegdorj announced his moratorium, Catherine Ashton, the High Representative of the Union for Foreign Affairs and Security Policy within the EU, issued a declaration congratulating the president on the moratorium. The High Representative had remained well informed regarding the developments in Mongolia and the upcoming moratorium.

Tellingly, she not only congratulated the president but also the parliament, government, and the Mongolian people, all being entities that Elbegdorj would need to get on board to effectuate the abolition:

The European Union welcomes the announcement on 14 January 2010, of a moratorium on the use of the death penalty in Mongolia. The EU congratulates the Mongolian President, the State Great Khural—the unicameral Parliament of Mongolia—the Mongolian Government and the Mongolian people on this important decision. The EU encourages Mongolia to commute all existing death sentences into life sentences.

The European Union considers

²⁸ Based on the author’s experiences as Netherlands Embassy Liaison Office representative in Ulaanbaatar from 2008 to 2012.

that the abolition of capital punishment contributes to the enhancement of human dignity. The EU considers capital punishment to be a cruel and inhuman punishment, which fails to provide deterrence to criminal behaviour and represents an unacceptable denial of human dignity and integrity.

The European Union reaffirms its objective of working towards universal abolition of the death penalty. It hopes the moratorium in Mongolia is the first step towards the abolition of the death penalty which might encourage other countries in the region to follow suit.²⁹

To highlight international support for the moratorium, the Office of the President posted the EU declaration along with a number of other supportive declarations on the President’s official website. Other declarations of support included statements from EU member states, such as the United Kingdom, Germany, and France. Interestingly, the UK’s statement also argued for the lifting of state secrecy regarding the executions:

Working closely with our EU partners, we continue to call for an end to capital punishment and the use of the death penalty, for all crimes, forever. I urge the Mongolian government to build on today’s announcement by removing secrecy laws surrounding the use the death penalty.³⁰

Further support included declarations from Swiss Confederation,³¹ the UN representative office in Mongolia and international NGOs such as Amnesty International.³²

The political support for the presidential moratorium extended by the EU had entailed a high degree of coordination among the individual EU member states represented in Ulaanbaatar, the EU, and the Office of the President of Mongolia. The coordination had been initiated in the weeks preceding the moratorium by a human rights advisor to the president. The advisor had called upon selected ambassadors and representatives who were posted to Ulaanbaatar, including the current author, to request support for the moratorium.³³ This individual had briefed the diplomats on the preparations underway regarding the moratorium, outlining the president’s objections to the death penalty and explaining the dilemma relating to the state secrecy legislation. Further, the advisor had cited media reports highlighting perceived miscarriages of justice surrounding Mongolia’s executions. The advisor emphasized that the state secrets surrounding the death penalty made it particularly difficult to inform the general public and to raise public support for the moratorium.

29 Council of the European Union, Declaration by the High Representative, Catherine Ashton, on Behalf of the EU on the Moratorium on the Death Penalty in Mongolia, Brussels, January 14, 2010, 5340/10 (Presse 4), p. 3.

30 Office of the President of Mongolia, UK Welcomes Moratorium on the Death Penalty in Mongolia, January 18, 2010. Retrieved from <http://eng.president.mn/newsCenter/viewNews.php?newsId=125> [accessed May 24, 2018].

31 Office of the President of Mongolia, Switzerland Welcomes the Moratorium on Capital Punishment in Mongolia, January 20, 2010. Retrieved from <http://eng.president.mn/newsCenter/viewNews.php?newsId=130> [accessed 24 May 2018; discontinued].

32 Office of the President of Mongolia, The United Nations in Mongolia Welcomes Steps to Establish a Moratorium on the Death Penalty, January 21, 2010. Retrieved from <http://eng.president.mn/newsCenter/viewNews.php?newsId=131>; Mongolia: Moratorium on Executions Welcomed, 2010-01-20 <http://eng.president.mn/newsCenter/viewNews.php?newsId=129> [accessed 24 May 24 2018; discontinued].

33 The discussion of these events is based on author’s experiences as Netherlands Embassy Liaison Office representative in Ulaanbaatar between 2008 and 2012.

Hence, support from the EU as well as from individual EU member states was greatly welcomed.

Thus, representatives from the embassies of France, Germany, the United Kingdom, Bulgaria, and the Netherlands who were posted to Ulaanbaatar, as well as diplomats from Canada, Japan, the United States and the UN, attended the parliament session held on January 14, 2010 during which the moratorium was announced. Their presence served to highlight their support for the president's initiative, as did the

subsequent declaration by the High Representative. The declaration had been set in motion by a diplomat of the Embassy of the Netherlands accredited to Mongolia who had officially called upon the High Representative to make the EU declaration in support of the moratorium.³⁴ Following the moratorium, resident EU ambassadors in Ulaanbaatar delivered the EU declaration of the High Representative to the president.³⁵ Likewise, other EU members had prepared their above mentioned declarations of support.

The Abolition and the EU

Following the passage of the above mentioned bill on the legal abolition in the Parliament in 2015, the EU issued a swift response through the European External Action Service's spokesperson:

The vote on 4th December by the Parliament of Mongolia in favour of a new Criminal Code that abolishes the death penalty for all crimes is truly excellent news. Capital punishment is a cruel and inhuman punishment which fails to deter criminal behaviour and which represents a grave denial of human dignity and integrity.³⁶

It is noteworthy that the line of reasoning and the wording used by President Elbegdorj to plead the case against the death penalty closely resembled those used in the above

Guidelines and in High Representative Ashton's declaration. The president referred to the degradation of human dignity, alternatives to capital punishment, the cruel and inhumane aspects of the execution process, the risk of executing innocent victims following a miscarriage of justice, and the absence of proof of the death penalty acting as a deterrent in relation to criminal behavior.

In addition, President Elbegdorj expanded on these general values by referring to dimensions that specifically related to Mongolia's history and society, including efforts to abolish the death penalty in the 1950s, the purges and executions of the 1930 and the direct bearing of state secrecy laws on

34 The discussion of this event is based on the author's experiences as Netherlands Embassy Liaison Office representative in Ulaanbaatar from 2008 to 2012.

35 Office of the President of Mongolia, Declaration by the High Representative, Catherine Ashton, on Behalf of the EU on the Moratorium on the Death Penalty in Mongolia, February, 18, 2010. Retrieved from <http://eng.president.mn/newsCenter/viewNews.php?newsId=124> [accessed 24 May 2018; discontinued];

36 Statement by the Spokesperson on the abolition of death penalty in Mongolia, EEAS, September 12, 2015. . Retrieved from https://eeas.europa.eu/delegations/mongolia/4482/node/4482_be [accessed 25 February 2020];

death row convicts’ attempts to commit suicide. Surprisingly, given the state secrecy laws which prohibited the revealing of details on executions, the

statement also revealed the method of execution, namely “shooting a person dead.”³⁷

Is “Normative Power Europe” at Work?

It is well accepted that the abolition of the death penalty belongs firmly within the realm of the core norms identified by Ian Manners in his article of 2002 launching the concept of NPE. The diffusion of these norms occurs, as outlined above, through common *informational* strategies, conditions of *procedural* EU membership, and the *overt* role of EU delegations. It is noteworthy that in the case of Mongolia, additional forms of diffusion are evident.

The *overt* role of the EU delegations and embassies of EU member states was prominent in Mongolia. European embassy representatives engaged in various symbolic as well as political activities in support of the moratorium as well as in response to the requests for support actively sought by human rights advisors. For example, they attended the opening of the parliament session during which the moratorium was announced. Moreover, statements in support of the moratorium and the abolition of the death penalty were issued along with various EU declarations, including those released by the High Representative. This overt role, including the aforementioned declarations and expressions of support,

is also connected to *informational* diffusion through strategic communications.

Diffusion through *contagion* was also explicitly present in the various statements and speeches by the president of Mongolia, who highlighted examples of initiatives taken by European countries and by the EU to abolish the death penalty in Europe and beyond. Various Mongolian officials, diplomats and politicians emphasized “shared values” between Mongolia and the EU. Though less prominent than the president’s statements, these articulations were frequently expressed at the conclusion of agreements forged between Mongolia and the EU, such as the inauguration of the above mentioned PCA or the opening of an EU delegation to Mongolia.

Although these expressions did not necessarily refer explicitly to the abolition of the death penalty, they touched on the core EU norms regarding, for instance, human rights and the rule of law, contributing to or constituting Manners’ *procedural* diffusion. These norms were also highlighted in embassy statements regarding the moratorium and the eventual abolition of the death penalty,

37 Office of the President of Mongolia, The Path of Democratic Mongolia Must Be Clean and Bloodless, January 14, 2010. Retrieved from <http://eng.president.mn/newsCenter/viewNews.php?newsId=122> [accessed 24 May 2018; discontinued].

drawing particular attention to the inhumane dimensions of the state secrecy laws surrounding executions.

Similarly, a degree of norm *transference* occurred through the EU's provision of aid and technical assistance. This transference was evident in the ODA granted to human rights groups in Mongolia, for example, and in the country's early inclusion in the EU's TACIS programme.

In sum, NPE is an apparent and appropriate dimension regarding the abolition of the death penalty in Mongolia, but the question remains as to the *degree* of its influence. It appears that the actual abolition of the death penalty in Mongolia was first and foremost initiated by a single individual, the head of state of Mongolia, with support from human rights groups and activists. When he embarked on this initiative, the president recognized and mobilized the support extended by the EU and its member states for its accomplishment; support

that was essential for enacting a decision that remained unpopular and reflected a dramatic shift in policy.

Given this situation, public and political support for the moratorium and abolition of the death penalty remains very tenuous and may prove to hinge on a particular president. Certainly, no post-1990 Mongolian head of state before President Elbegdorj has taken any actions of this kind. To the contrary, taking Mongolia's voting record on an international moratorium at the UN before 2009 into account. Though Manner's concept of NPE is helpful to understand the process towards a moratorium and the abolition from the EU's point of view, the norm itself seems to be not *widely* shared in Mongolia. But didn't Manners already point out in 2002 that "accepting the normative basis of the EU does not make it a normative power, so we need to ask how EU norms are diffused..."?

Post Script

When Mongolia elected a new president in 2017, it reopened the door for new initiatives to reinstate the death penalty. At the start of 2018, a newly inaugurated President Khaltmaagyn Battulga announced his intentions to reinstate the death penalty in Mongolia for crimes such as the sexual abuse of minors. In April 2018, the Office of the President announced that the new

president would present a draft bill to the parliament to this effect.³⁸ According to the statement, the president "received a large number of verbal and written requests and demands from citizens regarding the reinstatement of [the] death penalty."

As previously noted, despite the successful repeal of the death penalty in the Criminal Code of Mongolia,

38 Office of the President, President Battulga to Present to Parliament Draft Bill on Reinstating Capital Punishment for Child Sexual Abuse Offenses, April 2, 2018. Retrieved from: <https://president.mn/en/2018/04/02/president-battulga-to-present-to-parliament-draft-bill-on-reinstating-capital-punishment-for-child-sexual-abuse-offenses/> [accessed 25 April 2020].

the country’s constitution continues to allow for the death penalty. In fact, in his statement at the opening of the 2018-parliament Spring session President Battulga argued that the Mongolian electorate favored the re-introduction of the death penalty in Mongolia and qualified the abolition “irrational” in view of the existing constitutional provisions and “external conviction”. A subsequent statement suggests that the stated “external conviction” may refer to the EU.

Indeed, the president continued to criticize the parliamentarians and government for what could be interpreted as erroneously prioritizing a so called “EU-guidance”:

Since you were elected by the people of Mongolia, the priority should be attached to the requests and requirements of your people. *The Government has not been appointed by the European Union* [author’s emphasis], therefore, the interests of Mongolians shall be the priority for the Government. It is crucial to prioritize the national feature and national interest when it comes to the

decision-making. As a sovereign state, Mongolia has the right to resolve its laws and penalty policies in its sole discretion without any guidance.³⁹

At the time of writing, the abolition of the death penalty in Mongolia remains in place, however fragile its future prospects may be. President Battulag’s remarks regarding reinstating the death penalty, however, may contribute towards an interpretation that maintaining the abolition of the death penalty in Mongolia indicates some degree Normative Power Europe at work.⁴⁰

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39 Office of the President, President Battulga delivers speech at the opening of parliament’s spring session, 5 April, 2018, Retrieved from: <https://president.mn/en/2018/04/05/president-battulga-gives-speech-at-opening-of-parliaments-spring-session/> [accessed 25 February 2020].

40 As for former president President Elbegdorj; following his second and final term he accepted the position of commissioner of the International Commission against the Death Penalty (ICDP), an independent body launched by the Spanish government in that year that advocates for the worldwide abolition of the death penalty: Statement of the International Commission against the Death Penalty: ICDP Welcomes Former President of Mongolia Tsakhiagiin Elbegdorj as its New Commissioner, Madrid, February 22, 2018. Retrieved from: ICDP 003/2018 <http://www.icomdp.org/cms/wp-content/uploads/2018/02/ICDP-welcomes-former-president-of-Mongolia-Mr-Elbegdorj.pdf> [accessed 25 February 2020].